UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF PENNSYLVANIA

IN RE:)	Civil Action No. 14-3224(EGS)
SHERRY L. BODNAR,)	
Plaintiff,)	
v.)	
BANK OF AMERICA, N.A.,)	
)	The Holmes Building
Defendant,)	101 Larry Holmes Drive
)	4th Floor
v.)	Easton, PA 18042
DAWN M. WEAVER,)	
)	August 3, 2016
Respondent.)	10:24 a.m.

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE EDWARD G. SMITH
UNITED STATES DISTRICT COURT JUDGE

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COURTROOM DEPUTY: United States District Court, Eastern District of Pennsylvania is now in session. The Honorable Edward G. Smith presiding.

THE COURT: Good morning, counsel, you may be seated.

THE ATTORNEYS: Good morning, Your Honor.

THE COURT: The Court is called to order in the matter of Sherry L. Bodnar versus Bank of America, N.A. versus Respondent Dawn M. Weaver. This is Civil Action Number 14-3224. The Court convenes today for purposes of a fairness hearing with respect to the final approval of the class action settlement in this matter. Would counsel please identify themselves for the record?

MR. ZAVAREEI: Good morning, Your Honor. Hassan Zavareei, lead counsel for the class.

MR. KALIEL: Good morning, Your Honor, Jeffrey Kaliel from Tycko & Zavareei, Washington D.C., also for the plaintiff.

THE COURT: Good morning.

MR. OSTROW: Jeff Ostrow, class counsel for the plaintiffs (indiscernible).

MS. FINKELMAN: Natalie Finkelman, Shepherd, Finkelman, Miller and Shah.

THE COURT: Good morning.

MS. KAUFMAN: Good morning, Your Honor. Jessica

Kaufman from Morrison & Foerster on behalf of Bank of America.

MS. FIGUEROA: Good morning. Tiffani Figueroa of Morrison & Foerster also on behalf of Bank of America.

THE COURT: Good morning.

MR. MANOCHI: Good morning, Your Honor. Glenn Manochi here from Lightman & Manochi, Philadelphia. We represent Dawn Weaver.

THE COURT: Good morning, sir.

MR. MANOCHI: Good morning.

THE COURT: The Court has before it the following documents which have been thoroughly reviewed before the hearing today. We have the objections of Dawn Weaver, which were filed on June 6, 2016, which is Document Number 78, as well as, the exhibit that was filed under seal to the objections which is Exhibit 79. We have the consent motion for settlement which was filed on July 5th, 2016, which is Docket Number 82. We have the request for Judicial Notice which was filed by the plaintiff, which is Document Number 83. Document 84 is the consent motion for attorney’s fees filed by the plaintiff. Document Number 85 is a memorandum of law in opposition to the unopposed motion for certification filed by Ms. Weaver and finally we have the notice by Dawn Weaver, Document Number 88, which supplemented the objections, and I do want to commend counsel for their thoroughness of their submissions. Counsel, you may proceed.

MR. ZAVAREEI: Good morning, Your Honor.

THE COURT: Good morning, sir.

MR. ZAVAREEI: It is a pleasure to be here today to present to you for final approval what we believe to be an excellent class action settlement in this very complex and difficult case. I would like to begin by sort of giving you an overview of how I intend to conduct the presentation, but before I do that, I'd ask if there any specific questions at the outset, that you would like for me to answer?

THE COURT: No. You may proceed, sir.

MR. ZAVAREEI: Okay. Thank you, sir. So first I'm going to talk about the general contours and outlines of this settlement and explain to you why this is an excellent settlement in light of the Girsh factors. And then I'm going to talk a little bit about the objection process and how that works and the valuable features of the objection process and why those valuable features are not at play here. And then finally, Your Honor, what I'm going to do is talk about some of the specific objections made by the objector in this case.

First, with respect to this case, I think it's very important to start out with the very complex nature of this case. This is not a easy cut and dry case. No one else has brought a case like this other than us, prior to us bringing this case. We have been -- prior to bringing the case, in fact, we spent months and months investigating trying to figure out exactly what was going on, what the processes were because we believe they were not transparent from our dealings with our client who brought the issue to us and with other people who we spoke to who were experiencing the same thing.

So it was very complex and I think as you may recall from the oral argument on the motion to dismiss, it’s a very difficult case that even once you have figured it out, to understand and to articulate and then when we had to argue over the motion to dismiss, to explain how we were alleging that the conduct was actually violative of the terms and conditions which Bank of America insisted throughout explained exactly what the conduct was at issue was going to happen and that the class members were on notice and had agreed to the conduct at issue in this class.

So this was an untested legal theory. We did a lot of work here, Your Honor, that I’m quite proud of our team for doing. We conducted full discovery and once we’d sort of gotten through that process and figured out everything that was in play, we drafted a detailed amended complaint to try to strengthen, to sure up our allegations because we believed that we’d uncovered some aspects of the transactions that were different than what appeared at first blush to be going on. And as a result of the extensive discovery that we took, we were able to present that to you again. And defendants had briefed a motion to dismiss on that and it was at that time that we engaged in, started to begin settlement negotiations.

Now with respect to the actual settlement here, this is an outstanding relief for the class. There are two features. The first feature is the monetary feature and, Your Honor, the $27.5 million fund, is, it's not one of these reversionary funds. It's not one of these phantom funds. It's not a claims made fund. The money all goes in and it all gets distributed. Nothing goes back to the defendants and that's an incredible feature about this case. It's actually quite rare and a lot of the cases that have been cited by the parties in these briefs actually involve cases where there are reversions or the funds are based on claims made and that's not at all what's happening here.

Then with respect to the amount of the fund, the twenty-seven and a half million, so I think we made it clear in our paper that there were two potential measures of damages and I want to talk about those just for a moment if I may. The first very most aggressive theory of damages was essentially that every overdraft fee incurred by any class member as a result of these recurring overdraft fees causing -- I'm sorry -- these recurring debit transactions causing an overdraft fee when there was a positive balance when the fee post, when the fee was authorized, but then a negative balance when it was actually posted, that under those circumstances everyone of those overdraft fees counted as damages.

The problem with that -- and that's 13 percent. That's the big, that's if you include everything. The problem with that theory, Your Honor, is the disclosures actually say that they're going to do that and that's something that we struggled with from the very beginning of this case and I think that we talked about at great length during oral argument here. But what actually, the real heart and soul of this case and what actually brought this to our attention, we're not those, all of those overdrafts, they were sort of what we'll call the secondary overdraft fees, which were caused when additional overdraft fees were charged as a result of that conduct that was disclosed and it was our argument that the rest of that and the fact that this could cause secondary overdraft fees was not, in fact, disclosed. And this is probably the most likely and most defensible theory of damaages and based on that measure, Your Honor, we're actually getting 48 percent of the actual damages, so.

THE COURT: So actually that the overdraft fee reduced the balance and then there was another overdraft fee.

MR. ZAVAREEI: Exactly.

THE COURT: Okay.

MR. ZAVAREEI: And it's our belief, Your Honor, that that was the most viable and likely theory of damages in this case, although, of course we contended that -- and I think we contended that the higher measure could have been attained and

I think that's part of the risk of that occurring is part of what was able to bring Bank of America to the settlement table.

And then the second part of the settlement, Your Honor, is the injunctive relief which cannot be discounted, which is that the bank is going to provide notice to all of the class members that they're going to work on -- that we have the ability to give say so on the exact nature of that notice that's going to be mailed directly to all the class members, that will notify them of the practices and the impacts on their accounts. And this, Your Honor, is more than we could have hoped for and probably more than we could have gotten even if we prevailed at trial because it's actually acquiring an affirmative disclosure by the bank. And, so we're very pleased with that and we think that that is going to have an incredible affect on the class members.

And just for a moment, when I -- before I move on, as I mentioned, this is a very complex case and we did discuss that and I think I've seen in the objector's briefs, and I, the conception that this relief is inadequate in light of the breadth of the impropriety. Your Honor, I suspect that the, in light of the history of the objector here, that the objector has no idea what the impropriety is that we alleged and has no understanding of that and I welcome and challenge Mr. Manochi to explain to the Court what it is he believes is the so called breadth of the impropriety at stake in this case.

Now some other factors in the Girsh analysis that I want to address. The notice here was outstanding, Your Honor. We reached, directly reached 96.5 percent of the class members through e-mail and mail notice and the support from the class is outstanding. We only had 49 opt-outs out of almost three million class members and that’s very low and then only one objector out of almost three million. I’ve never seen anything like that, Your Honor, and I’ve been doing this a long time to have a -- and in cases with banks, I’ve done a lot of research and I’ve also had my own personal experiences, this is to to have three million class members and only one objector and for it to only be a professional objector speaks volumes about the settlement.

And, Your Honor, another important aspect of the settlement is the nature of the negotiations in this case. This case, the negotiations began with a query from Judge Wells, who offered to assist us with the negotiations, and we met with Judge Wells in Philadelphia, with defense counsel, and we spent a day with her, back and forth, talking about the value of the settlement and she -- of the case -- and she did a great deal to assist us to get, and to get those talks started, but it did not result in a settlement.

After several months, the parties ultimately agreed to work with Judge Layn Phillips, retired District Court Judge Layn Phillips, who is one of the best mediators, private mediators in the country, Your Honor, and the parties flew to California, spent a full day and late night in a mediation session with retired Judge Phillips, we were unable to reach a settlement at that point and then we continued the negotiations. We worked on a settlement agreement. We ultimately got a term sheet that we could agree on that laid out the general terms and then we worked for months to finalize the settlement agreement.

And then we had issues with respect to the allocation. We had the money agreed on, we had all of the other aspects, the injunctive relief agreed on, but we had some disagreements with respect to how the money was going to be allocated and we thought this was an important issue. Important enough to go back to Judge Wells and ask for her assistance with respect to the allocation issue and we presented several options to her. She made a recommendation as to what she thought was the most fair allocation, which we, which both sides agreed to and accepted and based on the presentation that we gave to her of the settlement and of the allocation agreement, she praised the settlement and said, and stated that she believed it to be an outstanding settlement.

Your Honor, I also want to talk briefly about Ms. Bodnar. Ms. Bodnar put herself at great personal financial and privacy risk by coming forward and standing forward and standing forward as a plaintiff in this case. She was, she met with us numerous times. She spent hours if not days working with us on trying to figure out what was happening here --

THE COURT: And I will tell you this is one of my concerns, is the $20,000 class rep award, so I do appreciate whatever focus and additional information you can provide with respect to that recommended award.

MR. ZAVAREEI: Okay. Thank you, Your Honor. That's helpful. So Ms. Bodnar is a single mother. She's the sole bread winner for her family and she took out a lot of time -- worked with us. We, my colleagues and I, came up here from Washington D.C. to meet with her at least three times just to understand what was going on and work with her and to prepare her for her deposition. At her deposition, which lasted almost a full day, her private, personal spending habits, including very potentially embarrassing things, including debts that she had, overdrafts that she'd incurred, things that could cause her to actually lose employment if her employer found out about it, those sorts of things were revealed during the course of her deposition and she put herself at great risk in doing so. Also, it's no small thing to sue your bank, Your Honor. She sued Bank of America, knowing that this could ultimately resulted in some sort of repercussions from the bank and put herself out there.

Now we understand that the 20,000 is a big ask and it is on the higher end of these compensation awards. For that reason, Ms. Bodnar would be willing to, would be pleased to accept a smaller amount, but we believed as her counsel, that it was our obligation to ask for that amount because -- and I've never asked for that amount for a class representative before, but Ms. Bodnar truly was essential in uncovering what had happened here and helping us with the conduct of this litigation.

Your Honor, I also want to talk about the fee briefly and I'm going to get into that in greater depth later, but just to point out now, that the 33 percent that we've requested does not include the value of the injunctive relief and in similar cases, Courts have actually taken that into consideration when evaluating the 33 percent.

So now, Your Honor, I'm going to talk a little bit about objectors and the role of objectors in class action settlements and first I want to begin by saying that there is a very important role for objectors in class actions. Legitimate objectors serve a valuables purpose that have been recognized by courts throughout the country in potentially bringing mistakes even to the attention of the court. Problems with the release, even in some instances collusion, reverse auctions, a lot of time objections happen when there are competing cases that have been going on at the same time and there's a settlement. Those types of objections brought by people who are trying to improve the class have actually served the interest of the class.

But then there's something else, Your Honor. There's something that has been called the professional objection which has been described as, by the District Court of New Jersey, as professional objectors bring objections primarily for the purpose of delay and to extract, indeed often to extort payment to the objector's counsel to go away. This has been described by numerous courts as a scourge on the profession. It clogs the courts and it hurts the class members, Your Honor, and the way that this works is the professional objectors file an objection, they come to the final fairness hearing, they wait until the Judge enters a final settlement approval and then they file a notice of appeal. Only at that point, Your Honor, once the notice of appeal has been filed, that they begin to engage with plaintiffs' counsel and, at that point, they seek a payment for them to go away essentially.

And, Your Honor, I would submit to you there's a whole world of difference between these professional objectors and the legitimate objectors that I talked about. In fact, when I was looking this morning, just doing my final preparation, I found something that was very interesting.

It's a case from the Eastern District of Pennsylvania by Judge Van Antwerpen, who I did a little research on, fascinating character who was on the District Court here in the Eastern District for years --

THE COURT: Yes.

MR. ZAVAREEI: -- and was moved up to the Third Circuit originally by Ronald Reagan and his nomination was never confirmed by the Senate and then was renominated by Bill Clinton and assumed the Third Circuit bench in 2003. And in a 2003 opinion, before he moved to the Third Circuit, he was evaluating an objection and Judge Van Antwerpen said, in evaluating the reaction to the class, which is one of the factors the Court must evaluate, that federal courts are increasingly weary of professional -- I'm sorry wary of professional objectors and we are suspect of objections because counsel is a professional objector.

So it is with a jaundiced eye, that this Court must look at an objection brought by a professional objector and I'm going to give you an example of this, that not only highlights what a professional objector is, but also, the difference between a legitimate and professional objector, but also segues to my discussion of the professional objector here in this case. The In Re Baby Products case, the Third Circuit case that both parties have cited, in that case there were a few objectors. There were legitimate objectors and there were professional objectors, including Mr. Bandas and the legitimate objectors filed a notice of appeal. So did the professional objectors.

But Mr. Bandas did not actually file an appellate brief. Instead, he did nothing. Once the appeal was heard, the legitimate objectors made very serious arguments about the inadequacy of the settlement that resulted in reversal and remand to the district court with instructions on how to examine the settlement and to evaluate the settlement. In response to that order, which came from these legitimate objectors, Your Honor, the parties went back to the drawing table and created a settlement that instead of having this phantom reversionary fund, actually created a fund that provided greater notice and greater money to the class.

Now that case is also noteworthy because the judge in that case, in the district court, initially granted 33 percent of that fund. On remand, the 33 percent was kept intact, but the Judge provided some of that money to the legitimate objector's counsel because they had done such a good job and in proving that case. Now Mr. Bandas also sought attorney's fees and the judge denied that request because they had not done anything to benefit the class.

So, Your Honor, here, when we talk about professional objectors, it is true that Ms. Weaver has objected at least to ten settlements and I'm not going to address with what's going on with respect to that. I think the real focus should be on her counsel who is an officer of the Court, Mr. Bandas, who has made millions of dollars engaging in this serial objection practice. Mr. Bandas did not make an appearance in this case, as we pointed out and as Courts have noted in our judicial notice, Docket 83, we directed the Court to some exemplars of what we found about Mr. Bandas, including in Iowa State Court that described Bandas in this way. Quote, Bandas is a professional objector who was improperly attempting to hijack the settlement of this class from deserving class members and dedicated hardworking counsel, solely to coerce ill gotten, inappropriate and unspecified legal fees.

Now, again, Mr. Bandas claims that his objections have helped. He actually cited the In re Baby Products case as an example of where his objections had actually helped settlements and I think we explained in detail in our reply memorandum, Your Honor, that in none of those cases is there any record of anything, any work done by Mr. Bandas, or Mr. Manochi that we found indicating that they've actually improved the settlement, and to the contrary he was denied his request for fees in the Baby Products case.

I want to talk two other examples of Mr. Bandas's misconduct in other cases, Your Honor. The first involves a case in the Western District of Washington, where after years of litigation, the parties entered into a settlement agreement. The Court finally approved the settlement over the objections of Mr. Bandas and other objectors. When he filed his notice of appeal, plaintiff's counsel asked the Court to post, to require him to post a modest bond, which the Court did. He flouted that order and refused to post the bond and continued with his appeal. Plaintiff's counsel refused to pay him any money in that case and had the Ninth Circuit summarily confirm the district court's, affirm the district court's ruling in that case. But down below, Your Honor, back in the district court, when called to task for the fact that he failed to post the bond, Mr. Bandas had no explanation for it and the district court barred him from ever practicing in that court again.

Another example, a final example that I'm going to talk about with respect to Mr. Bandas, Your Honor, is much more recent and is happening just up the road here in Southern District of New York. This is the Garber v. The Major League Baseball case that has been obstructed by the work of Mr. Bandas. In that case, Mr. Bandas made objections that were patently frivolous, that objected based on something that had been taken out of the case, showing a complete misunderstanding of what had happened and what had transpired in this case. Like in -- it's important because in that case, he did the same thing he did here, Your Honor. He did not appear in that case and as Judge Caproni stated in the transcript, which we've attached, you don't usually have lawyers doing what you do, which is expressly not filing a notice of appearance, apparently, so you can avoid the possibility of sanctions.

Local counsel withdrew from that case, as has happened in other cases involving Mr. Bandas. And as Judge Caproni stated, her concern was that this is simply a pattern. It is a strategy that is designed to throw monkey wrenches into class settlements, so that you can get money to go away from the plaintiff's lawyers. And she demanded that he appear in front of her, even though he had not made an appearance and has demanded that he respond to the motion for sanctions, which is still pending. So now what do we have, Your Honor? We have one person standing between three million people and the rewards of this excellent settlement and only doing so, not for some legitimate objection, but only to extract an improper payment.

I want to talk about a few of the specific objections that were made by Mr. Bandas and Mr. Manochi in this case. First though, before I do, Your Honor, I want to talk about the requirements, the prerequisites to objections that were established by this Court, per the Court's order, which implemented these requirements, which really just asked for certain information. In fact, those requirements are virtually identical to the requirements in the multi-district litigation and the Souther District of Florida presided over by Judge King and the high to low reordering overdraft cases and that's at 275 F.R.D. 654.

Those requirements are virtually identical, and they're not discovery and they are not designed to deter objections. As Judge King stated, these requirements are intentionally designed, quote, to identify serial or professional objectors who play no positive role in class action litigation and contribute no benefit to the class. These requirements do not create any deterrent effect on any legitimate objectors, Your Honor, because there's no information for the legitimate objectors to provide. All they have to do is sign it.

They don't have a history of other objections and if they do, they can identify those and the idea that Mr. Manochi and Mr. Bandas cannot list the number of objections that they've had, a very simple requirement is breathtaking and there's simple defiance of the Court's order should not go unnoted and I think in and of itself, disqualifies their objection in its entirety.

It's also worth noting that the one case that they claim indicates that it's improper to have additional requirements for objectors that are not required for other class members is the Bezdek case from the First Circuit. That case actually held it was appropriate. They made the objectors provide proof of purchase and they didn't make the other class members do that and the district court actually -- the First Circuit actually held that it was not only appropriate, but important and I'll quote, of course it also important for district courts to screen out improper objections because objectors can, by holding up a settlement for the rest of the class, essentially extort a settlement of even unmeritorious objections. So for the cite that they cite, Your Honor, the First Circuit actually explained that it is appropriate to have additional requirements for objectors.

They also object that the allocation is unfair. Your Honor, again, this, I think this argument misses the point. There's some suggestion that there's inter-party conflicts and there should have been separate counsel appointed for the supposed conflicts. There are no conflicts here, Your Honor. There's always an allocation question in a case where people are subject to the same conduct, which is exactly what happened here with varying impacts.

It's important, as you consider this argument, Your Honor, to note that 60 percent of the class only were charged one overdraft fee and 82 percent were two or one overdraft fees. So the vast majority of the class, Your Honor, this only happened to one or two times. And Judge Wells thought it was appropriate in light of the cost of sending out checks and the number of class members to ensure that there was a minimum payment and that's why we adopted the five dollar minimum payment and there's no cited case law by the objector indicating there's anything at all inappropriate about that.

Your Honor, I also want to address their argument relating to the attorney's fees in this case. First of all, I want to start with the percent of the fund, which is what we're talking about here and was established by the Supreme Court in the Boeing case as a means of properly allocating attorney's fees, indicates where you actually have a fund, a settlement fund, like this case. And so that's where we start, with the premise that the attorney should be paid with a percentage of the fund. Something that Mr. Bandas has actually challenged in other cases, even though that is well established law.

And then, Your Honor, the idea that the fund, the percentage of the fund, should be very similar to what is expected in private cases. This is one of the Prudential factors. What do lawyers normally get paid for contingency cases and based on that, the Third Circuit has indicated and stated that fee awards have ranged from 19 to 45 percent of the settlement fund and that's from the GM case in the Third Circuit, 1995.

Now objector would, has argued that there is a 25 percent benchmark in this case. That is absolutely untrue, Your Honor. There is no 25 percent benchmark. There are numerous cases that we've cited and I'm just going to mention a few here today that have upheld 33 percent fees and have indicated that the benchmark is actually as I stated 19 to 45 percent.

So, in fact, the only case, the only recent case that they cite for this idea that there's a 25 percent benchmark is the Honeywell case, this unpublished decision, and in the Honeywell case the Court actually cited the GM case and stated that the Third Circuit has observed fee awards have ranged from 19 percent to 45 percent of the settlement fund. So it's patently frivolous, Your Honor, for the defendant to claim -- for the objector to claim that there is a 25 percent benchmark in the Third Circuit, there is not.

In the very recent case of Landsman & Funk v. Skinder-Straus Associates, in which Mr. Manochi was himself an objector. In that case, the Third Circuit upheld a 33 percent fee of a reversionary settlement. That wasn't even a settlement where everybody got the money that was put into the settlement. Most of that money ended up going back and the attorneys got more money than the class got and the Third Circuit upheld the 33 percent fee in that regard. So that's a very recent case law from the Third Circuit upholding a 33 percent attorney's fee.

And another one that's worth mentioning, Your Honor, is from the District of Delaware from 2009, which is a megafund case of $250,000 million where a one-third fee was awarded. Now the objector has argued that these cases aside, that there is some sort of benchmark relating to overdraft fees and the Hawthorne that our firm was involved in, somehow, should govern what happens in this case. There are two points worth making there, Your Honor.

First, there is a benchmark in the Ninth Circuit. There's not a benchmark here and the Ninth Circuit, it's very clear law that 25 percent is the benchmark. Secondly, Your Honor, this case has nothing to do with those high/low overdraft cases. Hawthorne was one of the last settlements in a long line of these high to low cases that began in California and in the Southern District of Florida and resulted in settlements that ranged from 30 percent to 35 percent in attorney's fees. So unlike those cases, at least unlike Hawthorne and some of the later settlements in those cases, this was not a cut and dry case based on other work that others had done. This was very novel and something that we were able to determine and figure out and is at the cutting edge. It's not at the back end of what's going on unlike Hawthorne.

It's also, when we talk about these, objector wants to talk about the high to low cases, the very first settlement, Your Honor, was the Fifth Third Bank case by Judge

Dow and Judge Dow I believe is the chair of the Rule 23 subcommittee, which is working on new changes to Rule 23, including ways of ferreting out professional objectors. And Judge Dow held in that case that the plaintiff’s attorneys were entitled to 33 and a third percent of that fund and I want to just read something from that decision I think is very pertinent here because like in that case, this case has very strong injunctive relief that will benefit the class.

Judge Dow wrote, “In addition, it must be remembered that class counsel’s fee award is much less than one third of the class’s total recovery, once the value of the perspective relief is taken into account, where a settlement includes substantial alternative relief, such relief must be considered in evaluating the overall benefits to the class.” So, Your Honor, we would argue that the 33 percent is entirely reasonable, is fair and is consistent with other rulings from this court and from the Third Circuit and is actually should be, it’s not really just 33 percent because it does not take into account the value of the injunctive relief that we obtained here.

Lastly, Your Honor, I’m going to address the argument relating to lodestar multiplier. The objector argues that the multiplier here is too high. First of all it’s important to note that a lodestar multiplier is optional and it should not supplant the percentage of the fund, particularly where you have a real fund, not a reversionary fund and it's only meant as a gut check here, Your Honor, and the lodestar here, the cross check is well within other decisions including a decision from this court in 2005 in the Stop & Shop supermarket case, where there was a 15.6 lodestar multiplier. And in the case that I was talking about earlier by Judge Van Antwerpen, where he took such a dim view of professional objectors, there was, he stated that a multiplier of 6.08 was not unreasonable.

And there's the Meijer case, which is also from the Eastern District of Pennsylvania, from 2006 and I quote, "A 4.77 multiplier is slightly above the average. It is not far outside the range of normal awards." So, Your Honor, the lodestar multiplier here is immanently reasonable.

I want to close, Your Honor, by urging the Court to adopt the proposed order that we submitted and to enter final approval in this case as swiftly as possible. We know what the professional objector is going to do. They will notice an appeal. We will have to deal with that and that will cause delay to getting the money to the class. If you are inclined to grant approval, we ask that you do your best to -- we understand it's a heavy lift, but we'd ask that the sooner we can get an order, even if you're going to deny it, Your Honor, the sooner we can get an order the better, so that we can move this case and get the class members their money and the changes required by the injunctive relief in this case. Thank you.

THE COURT: Now, sir, with respect to the class certification itself, the factors are so clear in this case, I can't imagine a more appropriate class under Rule 23(a) and 23(b). Are there any issues that have come up with respect to the actual class certification?

MR. ZAVAREEI: No, Your Honor. As you say, they are very straight forward and simple cases involving different, but similar types of conduct by banks have been found to be appropriate and disputed, class certification proceedings, as well as, in settlements numerous times and we can identify all the class members. We actually, we're just -- oh, this is another feature of the settlement, Your Honor, we're just sending everybody a check, so none of the problems that often occur are present here.

THE COURT: I don't think I can imagine a more clear case where this is appropriate class for purposes of certification. With respect to the settlement approval factors that you've gone through with the Girsh factors, those also seem to tie in very well with this particular settlement, but that's because the settlement is so concrete and clear as you've mentioned. There's nothing difficult except all the work that you had to go into, together with Bank of America's counsel to come up with this allocation of the funds to individual class members.

I note that even from the very beginning of this case, it was clear that it was the first case of its kind trying to challenge the interaction of the whole policies and the overdraft fees. I mean it is the first case to have succeeded and I'm surprised. When I first looked at this case, I didn't think you were going to be able to develop a theory that would make it all the way through trial and you did and I commend you for that and I also commend Bank of America's counsel, Judge Wells and the mediator for all the efforts they went into in actually reaching a settlement that does provide these funds out -- there's almost three million individuals where it would have been impossible for any on to have brought this action, which is exactly the reason we have these class actions.

And I do appreciate all that you've submitted with respect to the Gunter factors and the request for the attorney's fees in this case, as well as, the cross check with the lodestar, and as I understand it, 49 out of these almost three million opted out. We have on objector, but all indications are that this is a professional objector. The settlement is 27.5 million. You've requested 20,000 for the class rep award. Even you concede that is a high amount, although, you did have to go through discovery in this case and I recall there were certain discovery disputes that arose that I had to get involved in.

And the attorney's fee award of 33 percent is certainly within the range that the Third Circuit has recognized is appropriate and even when I do the cross check at the 4.69, it's, as you said, I like to refer to it as the gut check. In a case as novel as this, with the work that had to go into it, certainly that's all, has to be taken into account with respect to whether that lodestar fits within that parameter as that gut check.

All right. Is there anything else you wish to present, or any other attorney from the plaintiff's that wish to be heard?

MR. ZAVAREEI: No, Your Honor. Thank you very much.

THE COURT: Do any of the attorneys from Bank of America wish to be heard?

MS. KAUFMAN: Your Honor, I've prepared a couple of things to say, if you'd like to hear them, but if you have specific questions for us, we'd also be happy to answer them first.

THE COURT: No. You may proceed, counselor. Thank you.

MS. KAUFMAN: Your Honor, I just, as you just noted, this litigation was extremely hard fought. We briefed two different motions to dismiss. One of which is still pending. We went through full discovery, both 30(b)(6) depositions, hundreds of thousands of pages of documents exchanged and, as Mr. Zavareei noted, the depositions were on both sides. Bank of America folks sat for a deposition, as well as, the named plaintiff. And the settlement was also as Mr. Zavareei described, the product of lengthy arms-length negotiations.

And one thing I just wanted to note for the Court and in discussing the fairness of the damages amount here and of the allocation methodology is that we think that the allocation methodology, as well as the settlement amount, reflects a word that you'll see all over the briefing in this case and the briefing for class certification, which is risk. As you know, and as Mr. Zavareei conceded, debit card transaction processing is very complex, but so is the inside of an iPhone, very complex. An iPhone though is simple to use and the Bank's task in writing its disclosures is to make clear to customers what, how to use their account and how to do things like avoid fees when the sort of guts of that process is quite complicated.

So I just wanted to note that although that process is complex, the Bank's disclosures on these points are exceedingly clear and I could stand here and read them into the record, but I'm not going to, because you have --

THE COURT: Well, I know a lot of that from the argument on the motion to dismiss, as well as, the evidence motions.

MS. KAUFMAN: Yeah. And you have the briefing and the motion to dismiss and you're, you probably know these issues as well as we do at this point. But we think that there was, as you said, this was a novel theory. It was hard fought but there was a lot of risk in our view to the class in proceeding on the merits in this case because the disclosures both of the hold policy and of the risk of overdraft fees where debit card transaction authorizes with sufficient available funds and settled with negative available funds. We're exceedingly clear and put in everyday language that customers of Bank of America can understand.

I also just wanted to reiterate what Mr. Zavareei said. We had two very experienced mediators involved in the settlement in this case and you know this was not an easy one to settle, but we landed in a place that I think both Judge Phillips and Magistrate Judge Wells felt was fair and you know, as Mr. Zavareei said, Judge Wells understood the five dollar floor and also was comfortable with that. Felt it was the most fair way to allocate the funds to the settlement class members. And if you have any specific questions for the Bank, I'm happy to answer them

THE COURT: Well the one think that I felt was the most complex was that allocation of the funds to the individual, but I think the method that's been developed is, it's as good as it can get, because how do you take this fund and divide it out among three million based on different overdraft fees that they've suffered. It is helpful that so many only suffered one or two, 82 percent, that's --

MS. KAUFMAN: That's right, Your Honor, and we also believe that, the fact that 60 percent of a class only incurred one or two of these fees as an indication that by and large, customers understood the disclosures here and understood that they could incur fees in this instance. Most people, you know, incur a fee once and they say, you know what, actually, oops, and some check their disclosure, but the fact that we didn't have, you know, a huge percentage of fees incurred by a large number of people over and over, we think supports the allocation methodology here where people who incurred a low number of fees get, you know, the floor and may get, especially if they have one fee, get a little bit more and everybody else gets pro rata share.

THE COURT: Thank you very much, counselor.

MS. KAUFMAN: Thank you, Your Honor.

THE COURT: And I'll hear from the objector's counsel, Mr. Manochi.

MR. MANOCHI: Thank you, Your Honor.

THE COURT: How are you, sir?

MR. MANOCHI: I'm good, how are you?

THE COURT: Very good. And a lot of these submissions by plaintiff's counsel and their settlement go directly towards you and I assume it's your co-counsel the way he's not entered an appearance?

MR. MANOCHI: It's, well, Mr. Bandas has not entered an appearance. I represent Dawn Weaver. I've dealt with her directly. We have a fee agreement that exists directly between Dawn Weaver. So in my humble opinion, Your Honor, any notions of what Mr. Bandas has done his prior case is just collateral. It doesn't deal with the issues that are in front of this Court today. You know, and that's the point.

The point of an objector coming into a class action and objecting is exactly what we have here. The second that the defendant put down the settlement pen, a litigation void occurs and that vacuum consists of the factors. They don't care anymore. They got the check, they send a twenty-seven and a half million dollar check and that's going into the settlement fund and that's it. So who then is representing the interest of the absent class members. That's why the federal rules say, and under Rule 23, the objectors have the right to come in and object and that's why we're here today.

And this notion that they know somehow this is a holdup, a stickup, class counsel ignores a very specific claim that we can make in this case. We have submitted that for the variety of reasons that are set forth in our submissions that this is an unfair settlement. So let me just point out the one area here that I really think deserves some attention and that is the fact that this is a closed end fund. So every nickel that Your Honor decides shouldn't go to class counsel ends up going to the class members, so that's why it's very important.

It's also very important because at some point class counsel can be in the position where they're looking for their own self-interest over that of the class members, and the reasons that we have in this case are there is, you know, we get into whole argument of 33 percent for whatever the attorney's fees in certain cases and lodestar multipliers that are 12, 15 or whatever. He hasn't cited one case in which the two of those come together and deal with what we're dealing with here. Okay.

So a lot of the cases are, sure, there's high multipliers, but the percentages are low, and on the other side you got low multipliers, but the percentages are high. You have to look at both of them to determine what the attorney's fees are in this case, you have to.

And we submit that, and class counsel is agreeing with us, that all of the bank overdraft cases that we've seen, any reported case, no case anywhere has gotten above a three multiplier. Okay.

So if you do the math in this case, there's $1,990,000, somewhere in that event, that they claim are the actual attorney's fees. Putting aside for a second the fact that there’s no submissions other than a one page saying, hey, Your Honor, this is what we did and it’s all accurate and there’s no double billing and, you know, it’s all on the legit, one page settlement. Taking that number, which I think is an insufficient submission for the purpose of determining whether plaintiff counsel gets nine million bucks, but assuming for a second that that -- we put in there, you multiple that number by three and that gets to the $5.8 million.

Why is that important? That’s important because if Your Honor ultimately decides that what they’ve asked for is well above what the Third Circuit requires or Your Honor’s discretion allows, that $3.2 million goes back to the class members. Why is that important to an objector? Because the case law gives us the right to come in and request that we are entitled to a percentage of that fee on the basis that we’ve created a common fund ourselves which benefits the class members. So that is the motivation that we have here today, Your Honor.

There’s no evidence that has been submitted anywhere from either class counsel or defendant’s counsel or anyone that says we are here under -- for any other reason but to object on the grounds of what is contained in the settlement agreement.

The point of that is clear. I mean if you add up the pages that they've dealt with, there's 23 pages by my count in which they're saying -- they're addressing our arguments. So to the extent they're saying these are frivolous, these don't have any merits, then why does it take 23 pages of argument to say that they don't? They're not -- the reason is clear. Because they are not frivolous on their face, and, in fact, they are -- they incurred with a lot of thought and a lot of attention to what is going on here.

So the points -- the point I'm simply looking to make here is that Your Honor should focus on the objections that we've placed in the record today. We've objected for a variety of reasons. We object on the fact that class counsel has required us to put in the notion of having Dawn Weaver, who we represent, requires her to put in all of the objections of her -- of the objector's counsel for the last five years. There's no class law in the Third Circuit that requires that. We've put -- we put class counsel to the task and show us. Show us exactly what's going on here, where there's case law that requires that in the briefing. They haven't come up with anything that said this is required in this circuit.

And the other point I'd like to point is the fact that, you know, the Court -- class counsel seem to suggest that this is a court order, it's required. I've gone back and looked at the February 5th, 2016 order in which Your Honor preliminarily approved the class and there's nothing in that order that says you've got to comply in terms of the disclosures that are required in the objection -- or in the class notice.

So -- but even putting that aside, you know, again, that order occurred in this litigation vacuum that I've spoke about earlier. At that point defendant's counsel put down the pen. They don't care. They got the settlement amount of money in there. Then it's -- the objectors don't have any seat at the table to tell the Court at that point that asking these people to require all of these additional requirements to object to a class action settlement are unfair for a number of reasons.

So that litigation vacuum here created an order which we think is unfair, and we were thankful that the Court has given us the opportunity to object to the purpose of that.

We think that these requirements are a chill on the objector's process. We think that also an objector has a right to be represented by competent counsel, just as any other class action representative has to be, and we think that to the extent that there's any impediment to this Court hearing objectors other than what they are, that they're class members and that they have an objection, puts a chill on the process.

And we think that the Court should be very wary of the fact that the -- this whole process occurs at a time when class objectors or absent class members, there's a possibility that they cannot be adequately represented for the reasons that we've indicated before.

So, you know, again, I just want to kind of point out the whole chill to the process that has occurred here. Number 1, the restrictions on, you know, the class. The objectors has to say all the previous objections they had. Number 2, the fact that the objector's counsel has to tell the Court about all the other previous objections that have occurred. We think that occurs in a chill.

And what happens? Okay. We're the only objector in this case. So we submit papers. On the day -- I think last Monday or Monday or so I submitted a notice to appear here. The next day we get the motion or we get the letter from class counsel threatening a sanctions motions because we're not appearing for a variety of reasons.

So the extra chill is now not only are we dealing with an objection here, we're dealing with threats of sanction motions. And why? Because we're trying to make a point before this Court. The Court -- the point that we're trying to make before this Court is that the class -- in addition to the objections that are in there, is that class counsel is asking for way too much money. We have a financial motivation clearly because to the extent that it benefits the class members and there's common funds created by this Court reducing the amount that the attorneys get, we're entitled to that.

There's no evidence here anywhere that we've -- than any but -- anything but directed toward the objections in this case. We think the fact that these -- that class counsel thinks that Mr. Bandas has done in other cases somehow is appropriate here. We don't see what that is. There's absolutely no evidence that we're here with any other motive but to really get in front of this court and give our opinion as to what's going on with this case.

We think that the papers speak for themselves. And we'd also like to address just for a second because -- the Hawthorne case. Okay. Now, I recognize Your Honor said this is a novel case and perhaps we can differ on this point, but at the end of the day this is a bank overdraft case. Situations where the bank was not entitled to do something with a customer account's money they did. That is the essence of a bank overdraft case. Okay. Now, you can -- we can quibble about, you know, it's a high low or it's based on a different bank procedure.

THE COURT: Do you understand what it is based on?

MR. MANOCHI: I -- to some degree.

THE COURT: It's very complex, but it has to do with holds that are put on with a debit card. When you go to a merchant and a hold is put on, what that does to your account now as it relates to do you have sufficient funds when you use that debit card or use your account otherwise, very much different from the Hawthorne case or the high low cases. In fact, it's such a novel theory it never got past the motion to dismiss because it's thankfully the -- counsel engaged in discovery, reached a settlement of it.

It's still I think a very complex novel idea of what the Bank would have done wrong, which is heavily fought by the Bank. They don't believe they did anything wrong. If you look at the disclosures, the disclosures are very thorough, and the disclosures basically say the Bank is going to do exactly what it does. And that's why this novel theory of coming up with the idea that the disclosure did not sufficiently indicate that the overdraft fee would then affect the balance in the account leading to another overdraft fee is even more unique and novel in the ideal of how or what the Bank did would warrant relief for the plaintiff.

So it is a very unusual unique type of overdraft case that I do not think we should lump together with the other overdraft cases, of which there have been multiple, but all very similar. Is that basically --

MR. MANOCHI: No.

THE COURT: -- what you understood the --

MR. MANOCHI: Well, I understand Your Honor's view of that, and our view of that is that this is a bank -- at the end of the day it really comes down to that same thing. And I understand there may be a different complex theory that's involved, but our position, as we've espoused here today as in the papers, is that even with that this is not a case that deserves that additional multiplier. And in that case I think the Court should look at the Seddon case in which they're referring to, you know, multipliers in the three range when you start looking at percentage verse and you do the lodestar multiple are appropriate there. So --

THE COURT: Now, you would agree in the Third Circuit that lodestar basically is what counsel referred to as a gut check --

MR. MANOCHI: Sure.

THE COURT: -- and then you compare. Is it -- does it make sense, is it reasonable, is it appropriate under the circumstances? It's not a substitute by any means for the percentage, nor is it a requirement that the lodestar fall in any particular -- well, we do want to look at the range because that's where we're getting the gut check from, but certainly that in this particular case this does not run afoul of any Third Circuit law with a lodestar of I think it's four point --

MR. MANOCHI: I think 4.69, Your Honor.

THE COURT: 4.69, yes, sir.

MR. MANOCHI: Yeah. Well, again, our focus and our point to the Court is that in these types of cases the best evidence of other -- best evidence of what an appropriate lodestar is is other similar cases. The --

THE COURT: Right.

MR. MANOCHI: You know, I think the one case that we cited in our brief is a good example of that. That was the Fitzgerald v. Gann Book case, a fellow district court judge in New Jersey. It was a Telephone Consumer Privacy Act case. That judge looked to other Telephone Consumer Privacy Act cases to determine what an appropriate multiplier is.

Now -- so you really have to look at everything altogether. You got to look at, you know, obviously -- I don’t want to preach to the choir, Your Honor --

THE COURT: No, that’s okay.

MR. MANOCHI: -- but certainly our view here is that you need to look both at the percentage and to the lodestar multiplier, and the Court should really at least start with similar cases because that is the best indicator of what other judges have done there and we think that that is --

THE COURT: How would you suggest the Court consider that there’s injunctive relief here which basically would prevent the same issue that arose for this class arising in the future? That there is --

MR. MANOCHI: Well, there’s no proof as to value, Your Honor. There is no affidavit submitted by anybody anywhere as to what that value is. So, you know, it could be nothing. I mean because they're basically asking the Court -- they're asking the Bank to do same thing that they're required to do under law, right? So the injunction is you're going to obey the law. So they're supposed to obey the law. So what's the benefit to that, especially when there's no proof that's been submitted here to Your Honor by any expert, anyone as to what the value is?

THE COURT: And that's an interesting argument because if you would hear from Bank of America, they -- counsel would represent that we've done nothing wrong. There was nothing wrong, but now our processes will be an extra step, a further notification of this particular issue so that our disclosures continue to become more and more precise than they were in the past.

That would not have happened if this had gone to trial and it had been a defense verdict or if it had gone to summary judgment and summary judgment had been granted to the defense. So there's a value to that that was achieved irrespective of the actual settlement and the amounts that are going back to the class.

Certainly if you agree that there was a problem here and that the plaintiffs have pursued an action that has provided some benefit to this class, then certainly that injunctive relief in the future must also be providing benefits to individuals that in the future would have suffered the same problem.

MR. MANOCHI: Well, it's a valuation issue, Your Honor.

THE COURT: Right.

MR. MANOCHI: There's nothing before this Court that indicates that has any value. You know, certainly no proof of any sort and, you know, and on that basis too. I mean I'll just jump over quickly to the incentive fee here. I mean there's not a single lick of anything by the plaintiff herself as to what she's gone through. The $20,000 on a -- you know, with essentially sitting through a difficult deposition for her, you know. You know, and if you start looking at the multipliers there, Your Honor, 20,000 when class members are getting six or seven dollars --

THE COURT: Right.

MR. MANOCHI: -- what's that? You know, 3,000 multiplier if I math is right --

THE COURT: Right.

MR. MANOCHI: -- somewhere around there. So we think that's certainly unfair.

THE COURT: You know, I consider my role to be almost fiduciary like. So when you talk about this void, obviously objectors can help me in my task as a almost fiduciary responsibility to make sure this is fair and appropriate and reasonable and that it’s not based on collusion.

So I completely agree with you the idea that an objector might bring out something that I might miss or that might be overlooked for one reason or another. Certainly that provides some benefit.

Now, here, you’ve suggested that the attorney’s fees is too high, and you’ve suggested that the class rep award is too high. Also, as kind of a secondary issue, you’ve argued that the process for filing objection is unreasonable and it’s burdensome to have to include all this information which is targeted solely to determine whether somebody is a professional objector. Is there anything novel about those objections? Is there anything about those objections that I wouldn’t on my own as a fiduciary in this case have been able to identify? Have you helped me at all?

MR. MANOCHI: Well, certainly. I mean I think that this -- you know, having read them -- well, it’s difficult to predict what would have happened had we not done something. So, you know, I’m not sure what --

THE COURT: But you do know I would have been carefully scrutinizing -- in my responsibility as the judge in this matter carefully scrutinizing the amount of attorney’s fees, the settlement itself, whether it was reasonable, the allocation of that settlement among the class members, whether it was given appropriate notice --

MR. MANOCHI: Sure.

THE COURT: -- whether there was any evidence of collusion, which there is not in this case, and whether the attorney's fees are reasonable when taking into account all the different factors that I'm required to take into account with respect to the Gunter factors.

When you come in, and you absolutely provided some law to support the arguments as to whether these attorney's fees are reasonable and whether the class rep amount is reasonable, I'm just wondering if your goal was to assist me in my job to ensure that this is a fair, adequate and reasonable settlement and not the product of collusion, if you could just help me along, what have you -- how have you helped me, if at all? Because I think that's what you wanted to do that. You wanted to make sure --

MR. MANOCHI: Sure.

THE COURT: -- that this was a fair, adequate and reasonable settlement.

MR. MANOCHI: Sure. Well, it's -- let me understand the question by saying I think the point here is that there's certain information that we had based on what was in the settlement.

THE COURT: Right.

MR. MANOCHI: This was in the class notice, and we provided the best information that we had, the best arguments that we had based on what was contained in the notice and in the class settlement. I think as things have occurred here there wasn't a particular lot of information with regard to attorney's fees at the time that the preliminary settlement was put together. They were going to ask for 33 percent, and, you know, we had the -- we had to object a full month before they had the ability or had the right to do a final thing.

THE COURT: Right.

MR. MANOCHI: So at that point they're asking 33 percent on their attorney's fees with basically no law whatsoever. They said we're going to ask for it, they said in the settlement agreement. They said that in the class notice as well. Okay. So we come up with the argument that we got to go with the 25 percent because -- can I get a little water?

THE COURT: Oh certainly, sir.

MR. MANOCHI: Thank you, Your Honor.

THE COURT: Certainly, sir.

MR. MANOCHI: I appreciate that break. So it wasn't clear to us, and by those original submission that were made to this Court, that certainly -- they didn't have the -- just by saying they were entitled to the 33 percent for attorney's fees certainly wasn't the law in this jurisdiction. They didn't -- they ignored the lodestar. They ignored the basic -

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THE COURT: Well, you didn't know if they were ignoring -- you had basically file your objections almost in a vacuum because you didn't have the benefit of the settlement agreement at that time.

MR. MANOCHI: We -- well, we had -- well, but there was nothing in there saying we're going to apply for attorney's fees and we're going to -- and I think it only came up in the class notice that they were going to -- the amount that they were going to ask for and that wasn't -- even the settlement agreement was in the class notice.

So we're kind of shooting a little bit in the blind, Your Honor --

THE COURT: Right.

MR. MANOCHI: -- because we don't know what they're asking for, the basis for it. So we're -- you know, instead of them coming forward in the normal course where they got to say, here's our argument about what's going on and why we're entitled to this, they're saying, well, we'll tell you our argument later, you kind of guess and you kind of figure out what it is we're going to try to do and then we'll be able to come back and really pound you because we can say that's not what we were going to ask for to begin with.

So we were put on the defensive here, and I'm hoping the Court is understanding that dynamic here, which is another reason why we're saying here, Your Honor, that this -- you have this litigation vacuum that wasn't particularly beneficial to absent class members.

THE COURT: Now, how often when you object to one of these settlements -- because you do have to do it kind of in the dark. You don't have the benefit of all the subsequent documents regarding the settlement. How often do you object based on what you perceive based on the limited information available to you, you perceive that this does not seem to be reasonable and fair and adequate and then when you do get the benefit of all those documents subsequent to that, do you say, you know what, after I've looked at all these documents, this really is a fair and adequate and reasonable settlement?

MR. MANOCHI: Well, the problems is, Your Honor, is that there's not that document. Okay. We know here that class counsel said the range of settlement is somewhere between 13 and 48 percent.

THE COURT: Right.

MR. MANOCHI: There's not a single document. No analysis that goes on. We're relying solely on class counsel to tell us that it's between 13 and 48 percent. So, okay. So how are we going to argue with that if all we have is a document that class counsel said, yep, this is what it is, it's 13 percent, it's 48 percent?

The same thing happens with the attorney's fees.

One page summary, there's $2 million dollars, trust us, Your Honor, we're absolutely right and front -- you know, we're being up front, we double checked and there's no overlap or anything like that.

So the problem you have here is we have to rely an awful lot on what class counsel is telling us. I do not see, you know, where -- at least I'm comfortable and maybe Your Honor has a different opinion and it's ultimately Your Honor's decision where there's this firm set of realty that you can actually base a decision on.

THE COURT: Well, I have somewhat of advantage over you in that. I've been with this case from its very filing, the day it's filed. So for two years this has been my case. It appears that you just got into this case very recently, is that correct?

MR. MANOCHI: Well, in June.

THE COURT: And, in fact, you've --

MR. MANOCHI: I think that's when the objections were due, Your Honor.

THE COURT: Right. And I don't know how much you even were able to review any discovery or review the complaint or review the documents that Bank of America had put out. And I also recognize and appreciate the fact that it is hard to object in a vacuum when your client comes to you and says, I got this notice, is it fair, is it reasonable, or I want to object to it, or should I object to it, and you provide whatever legal advice you think is appropriate under the circumstances where you don't have the benefit of what both the Court, as well as counsel who have been involved with the case for two years. You have to quickly determine whether, in fact, an objection is appropriate and then get that objection filed and then support the objection.

So I assume it is a very difficulty position for you to be in as an objector versus plaintiffs' counsel, who were investigating this case long before a complaint was even filed, and Bank counsel, who obviously are very familiar with the Bank procedures, Bank documents and then responding to the complaint, and then the Court when it's presented to us with a motion to dismiss and the subsequent discovery issues excepted throughout all of it. You are at a disadvantage and I recognize that.

MR. MANOCHI: And, you know, we have no right to the discovery that was exchanged between the parties. You know, perhaps the Court has the ability to look at that to make itself comfortable, but we certainly don't have that option.

You know, we view our role very seriously. You know, there is a litigation vacuum, as we've indicated, that occurs. We understand and really appreciate the fact that Your Honor takes so seriously the fiduciary role that Your Honor has in this case. We'd like to think that we have the ability to assist the Court in doing that. We'd like to think in this case we provided different lines of thought for this Court to consider in terms of approving the settlement, but -- and as importantly determining what is a fair allocation of the fund between absent class members and class counsel.

And, you know, we think that, you know, to the extent that, you know, as class counsel as themselves have admitted, this is the highest fee representative award that he's requested. We don't think that's fair to class members. We don't think that the fact that he's looking for a multiplier that's well above whatever -- any other bank overdraft fee cases provided is fair to the class members.

And, you know, for the other reasons that we've indicated in the objection as to the underlying reasons, we stand on those. We hope the Court considers them.

And, lastly, I'd like to close with the fact that, you know, Dawn Weaver is a human being. She is a working woman who objects to class. I mean she has, whether you like it or not, she has the -- been in the position where there's been a lot of bad services that have been provided to her.

She's giving and objecting to this case, as she's done with the others, on the fact that she doesn't think it's fair. She's told me, you know, Mr. Manochi, how can I saw this is a fair settlement if I get $6 when I've lost hundreds and class counsel gets $9 million.

THE COURT: And you're representing your client has lost a hundred dollars in overdraft fees?

MR. MANOCHI: Well, she told me that she's lost much more than $6. You know, she has been in the process of moving. She was unable to get the records. She closed the account I think a year or two ago and has had trouble getting out what that is, but she told me anyway -- I mean we don't have the -- I don't have documents, so I'm not going to represent to this Court that this is exactly how much she lost, but her conversations with me, without waiving any attorney-client privilege, she has lost far more than the $6 that she's going to get.

So I mean how can you argue with that? How can you argue with the fact that a working woman is saying, I think I deserve more and I don't think the attorneys deserve as much as they're getting or attempting to get?

THE COURT: Right.

MR. MANOCHI: Right.

THE COURT: And I guess she would not be aware of just how difficult the claims raised by the plaintiffs are in -- on behalf of your client, as well -- as far as whether ultimately she would do better in a case either bringing it herself or even if this case went forward to trial, the likelihood of success and the risk that, in fact, it would be a defense verdict --

MR. MANOCHI: Well --

THE COURT: -- either in summary judgment or at trial.

MR. MANOCHI: Well, sure. But, you know, I think that what happens there is, you know, class counsel is given the duty and the fiduciary duty to kind of represent all class members. You know, she’s one objector and this is her opinion and it may not be the opinion of all the other class members, but it’s certainly the opinion of my client in this case.

THE COURT: Understood.

MR. MANOCHI: If Your Honor has any further questions, I’d be glad to answer them.

THE COURT: No, sir. There is one issue. You had objected to the Court taking judicial notice of the documents that have been submitted by plaintiff’s counsel and class counsel. Do you have any objection to me taking judicial notice of that?

MR. MANOCHI: Well, for the reasons we set forth in the objection. I mean, again, I think the --

THE COURT: Doesn’t that -- that really goes more towards the weight to be afforded to that evidence rather than its admissibility through judicial notice.

MR. MANOCHI: Well, but I still don’t understand, you know, and, you know, I’ve yet to hear anything that in front of this court my client, Dawn Weaver, has done anything wrong in terms of what she's done and how she's done it in this case.

THE COURT: I think and I don't disagree with you except to the extent it's suggested that ultimately she may just be being used as a pawn to lead towards an attempt to extort money that would not properly be due to her or to her counsel is the argument from the plaintiffs' counsel.

What they're trying to establish is something that's been recognized by courts repeatedly, this idea of professional objectors. And you have been labeled by plaintiffs' counsel together with your co-counsel as -- together with your client as professional objectors. What that means to the appellate courts is really up to the appellate courts.

The real issue as far I'm concerned is you're almost like a self-appointed assistant to the Court in raising issues that perhaps I might have overlooked. I would not have overlooked them. I mean they go right to the very heart of the settlement. How am I going to overlook attorney's fees and whether they're reasonable or not? How am I going to overlook the settlement amount and the allocations? I'm not going to overlook that. All of that would have been scrutinized by me, whether you had objected or not objected.

But that said, I think there might be a -- and I -- from the best way to look at it from your standpoint is you are trying to ensure that the Court properly exercises its fiduciary duty, that this isn't just rubber stamped, that it is scrutinized the way the law requires it to be scrutinized and that is looking in the best light of your client and you and your co-counsel in raising this.

The light that the plaintiffs have tried to characterize you is quite a bit different, suggesting that that's not at all why you filed this objection, that it is, in fact, simply an effort that's been done before, either by you and your co-counsel and your client or all three of you together, that's been done before with the idea of trying to somehow personally profit from the settlement by threatening to delay the ultimate resolution of it by filing a notice of appeal directly after approval of the settlement and then trying to negotiate some profit. That's the light that's been characterized by the plaintiff. To -- and I don't want to mischaracterize it, but essentially that's their light.

This whole phenomena of the professional objector, we see it in others as a federal law as well where Congress intended certain things to be remedied and have set up certain laws and people find a way to manipulate that law or to take advantage of it in a way never intended by Congress, and it has these unintended consequences of misuse the law essentially.

So the only reason I see why this becomes important on appeal is it may be of some importance to the Third Circuit Court of Appeals that you and your co-counsel or your client have been repeat objectors; it may not. It doesn't affect me one way or the other.

You have shed light on a very area where light was already shed, and I intended to have and intend to continue to very much scrutinize those very issues that you've raised in your objection, and there's nothing novel about the objection or anything new that was brought forth that aides me in my task, but you have every right to file an objection on behalf of your client. And I've carefully considered the objection. It's focused me on exactly what I was already focused on.

But to the extent the plaintiff wants to create this record through judicial notice to have this as part of the record on appeal, I think that's appropriate. You can certainly argue why this does not fall within the rule with respect to judicial notice. I believe it does, but I'll hear argument from you if you don't believe it does.

MR. MANOCHI: Sure. I think the point, as I've touched on before and just let me re-emphasize it, is the point here is that this case involves this set of facts and this settlement agreement and this request for attorney's fees. In my view anything else is irrelevant, and I don't see what the connection is here other than trying to say, well, because somebody has done something in the past, then it's guaranteed to happen in the future. And, you know, but that record doesn't exist because there's lot of circumstances where Mr. Bandas has benefitted the class --

THE COURT: Right.

MR. MANOCHI: -- that has done things that have -- that benefit. And, you know, you can argue with what that is. I don't expect class counsel to invite Mr. Bandas to his holiday party, but I do recognize the fact that there is a function here that objectors serve.

And I think the Court and I think this whole process suffers if you try to bring in other facts, and those facts, you know, you don't have the whole story because you don't know what happened in those, you don't know what the ultimate result is in those cases. You have class counsel picking out the best bits in -- bits of whatever they have so they can try to impress upon Your Honor the fact that this whole process or professional objectors, as they're so called, are bad for the system. They're not bad for the system.

Everybody who appears in front of this Court has the right to be represented by competent counsel. Nobody is saying here that there's any incompetence going on with either what I've presented to this court or what Mr. Bandas has presented to this court in other cases.

So I just don't see how it's relevant. I just don't see what purpose it serves other than trying to in the end besmirch an objector who has legitimate objections. And, you know, other than trying to say, you know -- other than that motive to really paint the objectors in this -- the objector in this case in a bad light so Your Honor somehow says, you know what, I'm going to go with plaintiffs' class action counsel because I don't like what's going on within this process. That is unfair. It's prejudicial, and it doesn't serve this process one bit.

Now, I recognize the fact that Your Honor is very serious about this, but I don't see how at the end of the day when Your Honor is in chambers thinking about what is going on in this case and the merits of this settlement and the merits of this attorney's fee request and the merits of what we believe is an excessive class action representative fee, how anything else outside of that courtroom, outside of the record that's in front of Your Honor has anything to do with making the proper decision here.

THE COURT: Now, based on your experience, sir, are you surprised that with a class of almost three million people there's only one objector?

MR. MANOCHI: In my experience it's the first time I've seen it, but that doesn't mean -- all that means is there's one objector.

THE COURT: Right.

MR. MANOCHI: I mean, you know, the other two million and change had the opportunity to do that, they didn't. I -- you know, I don't know. You want to check the probability of that, Your Honor. I mean, you know, maybe we should buy lottery tickets if we can kind of predict who's going to settle or not object.

THE COURT: The other thing I want you to be aware of is while you haven't provided me any focus on an area of this settlement that is -- I was not already focused on and that my law clerks and I had not already thoroughly researched, I am nevertheless taking your objection very seriously because it's exactly what I was supposed to be looking at in any case with respect to the settlement.

So I don't want in any way suggest that I'm demeaning the objection or suggesting it's not getting a full consideration because it is and it will.

MR. MANOCHI: I appreciate it. I can't ask for anything more than that, Your Honor. I know this is my first time in front of Your Honor. We didn't have the benefit of this conversation before we filed the objections. You know, we believe your staff is competent and, you know, obviously Your Honor is going to give this a lot of consideration, as you should given your fiduciary duty to the absent class members.

To the extent that we've been able to assist the Court, well, we thank you for the opportunity to do that. To the extent that the Court requires any further information from us on any subject, we're certainly available to and would welcome the opportunity to provide you with that.

THE COURT: Thank you very much, sir.

MR. MANOCHI: I appreciate the time, Your Honor. May I be dismissed?

THE COURT: Certainly, sir.

MR. MANOCHI: Thank you.

THE COURT: And would plaintiffs' counsel wish to respond?

MR. ZAVAREEI: If I may, Your Honor.

THE COURT: Certainly, sir.

MR. ZAVAREEI: I'm going to address a few of the arguments made by Mr. Manochi first. He started off by talking about -- the argument that he made was that no Third Circuit authority requires him or Mr. Bandas to comply with the notice requirements in this case with respect to the requirements of identifying the other objections that he's been involved in. Well, that's not the test, Your Honor. Your court order adopted the court -- the notices and said that they were appropriate and should be followed, and so by refusing to do that, and that's Paragraph 6 of your preliminary approval order, he's essentially flouted, he meaning Mr. Manochi, Mr. Bandas and Ms. Weaver I guess, all of them, they've all flouted the requirements imposed by Your

Honor's order.

So there doesn't need to be a Third Circuit opinion saying it's appropriate. Just to be here, just to have the right to object he was supposed to have done those things, and Ms. Weaver and her counsel deliberately flouted those requirements because they didn't want to reveal all of the objections in other cases that they've been involved in.

And Your Honor, again, there is something very concerning about what Mr. Bandas has done here by indicating that he is counsel, but not making an appearance and not making himself subject to the sanction power of this court as the judge in the Southern District of New York has already addressed and is dealing with now. That's entirely inappropriate.

And with respect to this idea that there should be no distinction between professional objectors and regular objectors, that's just not the case, Your Honor. As I pointed out, courts all over the country have acknowledged there is an important distinction between real legitimate objectors and professional objectors, including the citation from Judge Van Antwerpen and that I read to your earlier. There is a distinction because what have they added to this process? Nothing. They have caused delay.

Let me -- this actually goes to some of these other arguments that Mr. Manochi was making with respect to the case not being that complex, that it wasn't that great a result, that he didn't have the advantage of knowing everything that was going on in this case, well, Your Honor, he could have called us. He could have actually -- or Mr. Bandas could have actually responded to the telephone call that I made to him when he filed his objection asking him if needed further information about the settlement or to hear what his objections were about. Mr. Bandas did not return my phone call. So those things could have been done.

And the idea, Your Honor, that they were operating from a blank slate is simply untrue. The notices provided significant detail about what's been going on in this case and about what the case was about, and yet he comes before you asking you to disturb a settlement that is going to benefit three million people without even understanding what this case is actually about, Your Honor, and that is why what these professional objectors do is problematic and subject to Rule 11 because Rule 11 isn't just about making frivolous arguments. It's also about asserting arguments for an improper purpose.

THE COURT: I believe the Court also has a duty to protect the class from any --

MR. ZAVAREEI: Absolutely.

THE COURT: -- vexatious self-interested conduct, et cetera, anything that would be actually detrimental to the class for the self-interest of the objector.

MR. ZAVAREEI: Absolutely, Your Honor, and I think -- just the fact that not only they did refuse to comply with the Court's requirements regarding their other objections, but they've still not explained why they haven't done so and why that's so difficult for them to do and they could have done so and they could have inquired. Instead they're gumming up the works of the settlement.

Your Honor, it is absolutely remarkable that they're the only objector. He said he doesn't know that it really matters. Of course it matters. Under the Gunter factors the second factor is the presence and absence of substantial objections to the settlement or the fees.

Now, Mr. Manochi would have you focus only on the percentage requested and the lodestar multiplier, but that -- those are only certain aspects. I mean there are other factors that have to be looked at and none of them are determinative. They are all to be judged in relationship to one another and all of those factors here, Your Honor, weigh in favor of the fee request that we've asked.

Another thing that Mr. Manochi claims is that there are no other overdraft fee cases and he continues to lump this in with those cases, which I think we've explained why we think that's inappropriate, that have had such a high lodestar multiplier. That's untrue. In the Southern District of

Florida there is no lodestar cross check. It's not required.

So in those cases, in a lot of those cases that settled, including the case against Bank of America that resulted in a fee of over $100 million, there was no lodestar cross check. There was something suggested about the number of hours, but it was certainly well above a three, and there was the Citizens case. There's the Whitney Bank case, the Associated Bank case, the TD Bank case, the Harris Bank case, the National City case, all of these cases, Your Honor, have lodestar multipliers of well above three, but there's no requirement in that court, as there is no requirement in this court, that the Court engage in that multiplier and so the Court didn't do that.

Finally, Your Honor, I would say that with respect to Mr. Manochi's arguments that he did not have an adequate basis to judge the objection. It's simply untrue. He had our fee petition and had time to file a reply brief. He knew exactly what he did. So he's saying, I couldn't respond, but here's my response. It just doesn't -- it doesn't hold water.

The general outlines were included in the notice. That's all that's required. The procedure of filing the fee petition and the final approval after the objections are due is well established and standard within this circuit and other circuits, and after he filed his objection he had access to all of our lodestar information.

I guess one last point, Your Honor, and I'll sit down is the objection made and that Mr. Manochi mentioned that we were somehow required to submit billing statements and that our summary of our time is insufficient, there's no support for that. There's no precedent for that. What we did is exactly what's done in cases in this circuit and other circuits and is more than sufficient for Your Honor to do the gut check that's required by the lodestar cross check.

THE COURT: Very well.

MR. ZAVAREEI: Thank you, Your Honor.

THE COURT: Thank you very much, counselor. Anything further from Bank of America's counsel?

MS. KAUFMAN: Your Honor, I just wanted to speak briefly, just very briefly about the value of the injunctive relief in this case.

THE COURT: Yes, counselor.

MS. KAUFMAN: You know, as you stated, this is a contract case in which Bank of America believes its disclosures are already clear. It's a little bit different from a case where, you know, we're talking about a practice or, you know, an unfair practice that could be changed in the future. Here, the injunctive relief is really to make sure that all of the members of the class are aware of the disclosures in their account agreements that clearly state that customers could incur these fees.

So I think from Bank of America's point of view the current disclosures are adequate, but the injunctive relief is valuable because if only to draw class members' attention to those disclosures and ensure that if they didn't intend to incur these fees that they won't incur them in the future because they know what their contracts say.

So I just wanted to go on the record and say that we think that in a contract case ensuring that the clear disclosures are made even clearer and that customers know where they are has significant value.

THE COURT: Okay. Thank you very much, counselor. And, Mr. Manochi, did you wish to be heard any further, sir?

MR. MANOCHI: I do, Your Honor. Just in closing, Your Honor, again, I thank you for the opportunity to address the Court. The -- I think the issues before the Court are pretty clear in terms of what we believe our objections are. We still believe that those have been properly submitted and submitted in good faith. And, again, we appreciate the opportunity to assist the Court in moving this process through.

We do think that the lodestar analysis in the Third Circuit is what's relevant. So to the extent that class counsel say there's classes -- cases in Florida that don't require it, we don't see how those are relevant because specifically for the purpose of double checking whether there was reasonableness, that's why the cross check and the Third Circuit requires that.

So to the extent that the Third Circuit wants some double checking going on in determining -- for this Court to determine if the fees are reasonable, that's why it's in place. So we don't believe any cases from the Southern District of Florida or any other circuit that doesn't use a lodestar multiplier have any relevance here whatsoever, and we appreciate that. Thank you, Your Honor.

THE COURT: Thank you very much, sir. Does anyone else wish to present any evidence or any argument or be further heard?

(No audible response)

THE COURT: And there is a negative from everyone involved. I do want to thank counsel very much for their efforts in this case. This was a very difficult case, and I am very pleased that you've been able to reach a settlement along the lines you have.

And I think this settlement is going to greatly benefit not so much because of the amount that each class member gets, but just the idea that to the extent this was an issue with understanding exactly how use of your debit card was going to incur fees and this whole idea of a hold put on by the merchants, et cetera, I think you've achieved your goal in this case, which was to rectify this issue and clarify it and get some money back to the class members who may have suffered some confusion about all this.

I'm going to carefully consider, as I already have, your arguments here today, as well as the sub-documents that you've submitted, and I will issue an appropriate order forthwith. Anything further?

MS. KAUFMAN: No, Your Honor. Thank you.

THE COURT: Very well. This matter is adjourned. Thank you.

COURTROOM DEPUTY: All rise.

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C E R T I F I C A T I O N

We, ANNEMARIE DeANGELO and COLETTE MEHESKI, court approved transcribers, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter, and to the best of our ability.

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COLETTE MEHESKI

DOMAN TRANSCRIBING DATE: August 4, 2016